

**Internal Revenue Service  
Appeals Office**

Release Number: **200950051**  
Release Date: 12/11/09  
Date: September 14, 2009

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UIL - 501.03-30

**Department of the Treasury**

**Person to Contact:**

Employee ID Number:

Tel:

Fax:

**Refer Reply to:**

AP:FE:

**Taxpayer Identification Number:**

E

**In Re:**

EO Revocation

**Form Required to be Filed:**

1120

**Tax Period(s) Ended:**

December 31, 20

December 31, 20 &

December 31, 20

**Last Day to File a Petition with the  
United States Tax Court:** **DEC 14 2009**

**Certified Mail**

**Dear**

This is a final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code (IRC). It is determined that you do not qualify as exempt from Federal income tax under IRC Section 501(c)(3) effective January 1, 2001.

Our adverse determination was made for the following reasons:

1. You are not operated exclusively for charitable, educational, scientific, or any other exempt purpose, as is required by IRC section 501(c)(3).
2. You are operated for a substantial commercial purpose, which is not an exempt purpose.
3. You are operated for a substantial private purpose, you serve private rather than public interests, and your activities result in substantial private benefit, which is not an exempt purpose.

Contributions to your organization are not deductible under Code section 170.

You are required to file Federal income tax returns on the form indicated above. You should file these returns within 30 days from the date of this letter, unless a request for an extension of time is granted. File the returns in accordance with their instructions, and do not send them to this office. Processing of income tax returns and assessment of any taxes due will not be delayed because you have filed a petition for declaratory judgment under Code section 7428.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217.

We will notify the appropriate State officials of this action, as required by Code section 6104(c). You should contact your state officials if you have any questions about how this determination may affect your state responsibilities and requirements.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

**Taxpayer Advocate Service**

**Phone:**

See the enclosed Notice 1214, Helpful Contacts for Your "Notice of Deficiency" for additional Taxpayer Advocate telephone numbers and addresses.

**Sincerely,**

**ATEAM MANAGER**

**Enclosures:**

Notice 1214 Helpful Contacts for your 'Deficiency Notice'

### Legend

ORG= Name of organization

AD= Address

NN= Name of individual

RR= Related organization

UU= Unrelated organization

ST= State

x= Number

X= Year

### **ISSUE 1**

Is ORG, Inc. (also referred to herein as ORG) organized and operated for educational, scientific, or charitable purposes within the meaning of Internal Revenue Code Section 501(c)(3)?

### **ISSUE #2**

Is ORG, Inc. subject to the penalties under Internal Revenue Code 6714 because it misinformed its clients that the set up fees solicited for the debt management program (set up and monthly processing) were tax deductible?

### ORG Background

This report concerns ORG Inc. which was incorporated on February x, 200X as a Domestic Non-profit Corporation in the ST. The articles were amended August x, 200X to include their exempt purpose, proscription against inurement, and a dissolution provision. Their articles provide that the purpose of the organization is to "assist needy debtors to improve their finances through educating them as to better means of managing their money and seeking for them, if appropriate, an extension or other reorganization of their debts". Their articles also provide that the corporation is organized exclusively for charitable, education, religious, or scientific purposes within the meaning of section 501(c)(3) of the internal revenue code (or corresponding section of any future Federal tax code.)

On December x, 200X, ORG received from the Internal Revenue Service a determination letter advising the organization of recognition of exempt status under Section 501(c)(3) of the Internal Revenue Code ("Code"), and an advance ruling on the foundation status under Sections 509(a)(2).

On August x, 200X, ORG was notified by the Internal Revenue Service that its Form 990 for the period ending December x, 200X was under examination. The examination was expanded to include the December x, 200X, and December x, 200X returns after the current president, NN, stated he could not provide information regarding the 200 year, because he was not associated with the organization during that time. The examination was not expanded to include any other years.

ORG has filed Forms 990, *Return of Organization Exempt from Income Tax* for the periods ending December 31, 200X, 200X, 200X, and 200X. The address of the organization provided on the returns is AD. The organization previously operated from a second location at AD however, NN, ORG Power of Attorney, stated that this office is no longer used. According to the returns under audit, the books and records are in the care of ORG.

Form 990 at Part III, Statement of Program Service Accomplishments for the 200X and 200X tax year's states,

“ . . . the organization's primary exempt purpose is to “educate the public about money management. This purpose is described as, “to assist indigent debtors in improving their finances through educating them as to a better means of managing their money and if appropriate seeking an extension or organization of their debt.”

The Form 990 at Part III for the 200X tax year states:

“To educate the public about personal money management skills and help individuals reduce excessive debt burdens for the purpose of avoiding personal bankruptcy.”

None of these returns indicate the number of clients the organization served.

#### Board of Directors, Officers, and Trustees

The board of directors and trustees for ORG has had many changes during the years audited. The 200X Form 990 lists two directors: NN as the Executive Director and NN as the President. The trustees were NN and NN. The 200X12 and 200X12 Form 990 lists one officer and three trustees. NN is listed as the president and NN, NN, and NN are listed as trustees.

During the initial interview, NN (the current president) stated, that none of the current officers were involved with ORG incorporation or application for tax exempt status. NN also stated that he met two of ORG former officers in October or November of 200 through the president of his former employer, RR. According to [REDACTED], the former officers resigned from ORG and put NN in charge without any exchange of money.

The following information was obtained from the minutes of the Board of Directors.

- 1 February x, 200X; the new Directors elected by the outgoing Directors were NN and NN. The new Directors voted to add NN, NN, and NN as Directors.
- 2 In June 200X, NN and NN resigned.
- 3 Mr. NN was voted on to the board on October x, 200X
- 4 Board minutes dated March x 200X, reported that NN resigned from the board at NN's request.
- 5 Director NN submitted his resignation effective June x, 200X.

NN further stated that after assuming the position of president he had the telephone service restored and called RR, because he knew this was the organization that provided service to ORG clients once they are set up on a DMP. NN agreed to honor the contract between ORG and UU which was due to expire the end of 200X. He also negotiated a new lease for office space in ST. In 200X, NN also opened an office in ST, because it's his home state.

During an interview, the president provided the following information regarding the officers and trustees.

1. President (NN) – NN's job duties include conducting employment interviews and evaluations, determining employee bonuses, and placing advertisements. Prior to his employment with ORG, NN was a counselor and



general manager for RR from July 200X – December 200X. While with RR, NN was in charge of the floor, a team, employee hiring, and evaluations.

2. Vice president/general manager (NN) – \$0 compensation during 200X12. NNs job duties included conducting employee interviews, hiring, training, and evaluating employees.
3. Secretary (NN) – \$0 compensation during 200XNNN consults with the other officers on how to get more clients. NN is employed with UU as a computer consultant and a financial adviser with UU in ST.
4. Treasurer (NN) – \$0 compensation during 200X12. NN reviewed all of the education materials ORG sent out and coordinated activities with the education director NN. NN is employed as a school teacher in ST.

Therefore, the board make up after June 200X, according to Mr. NN, would be himself, NN and NN. However, it should be noted that NN was never listed as an officer on the Form 990's for the years under audit, and he is not mentioned in the minutes of the meetings of the Board of Directors.

NN has stated he is the only signer on the checks since he became ORG president. Prior to his arrival, he believes that RR (who provides services for ORG) issued all checks from ORG accounts and he is not sure who the signor on the checks were at that time.

Form 1023 –

Application for Recognition of Exemption Under Section 501(c)(3) of the IRC

The Power of Attorney for ORG during the application process was NN . ORG stated the following information in Part II, Activities and Operational Information, of its Form 1023:

- 1 The organization was formed to help reduce the incidence of personal bankruptcy by (i) educating the public about personal money management skills and (ii) assisting needy individuals and families with their financial problem ORG. ORG will accomplish this by providing information to the general public on sound money management, counseling individuals who have financial problem ORG, and preparing budget plans for individuals and families who can benefit from them. ORG plans to develop a clientele by placing advertisements in the electronic and print media and offering financial and budgeting workshops. The workshops would be provided free of charge to religious organizations, civic groups, labor unions, businesses, and educational organizations through a cover letter and brochure.
- 2 ORG will provide information to the general public by (1) preparing videos, pamphlets, and other educational materials on budgeting, buying practices, and the sound use of consumer credit; (2) purchasing money management videos from third parties and pay standard purchase or rental fees to the providers then given free of charge to religious organizations; and (3) furnishing knowledgeable speakers for the general public. Until developing a full clientele, ORG expects to spend x percent (x%) of its time, effort, and resources on public information.

- 3 ORG will counsel individuals and families by (1) the use of trained financial counselors on budgeting and the appropriate use of consumer credit; (2) providing them copies of the public information materials; and (3) informing them of ORG budget plan program in which ORG will intercede with creditors to try to persuade them to accept partial periodic payments in satisfaction of the client's debt. In order to participate in the budget plan program, ORG will request that clients pay a \$x to \$x monthly fee that will be reduced or waived for any client who is financially unable to pay the full amount. ORG expects that that its counseling activities will increase from x and that its budget planning program will increase from five percent to a maximum of x percent (x%).
- 4 ORG plans to derive x of its total revenues from contributions received from creditors and clients who participate in the budget planning program. ORG does not define what a contribution is but states that it has no agreements and does not anticipate having any agreements with contributing creditors. Contributions from creditors will be voluntary and ORG understands that approximately half of all creditors can be expected to make a "fair share" contribution of x to ORG for each monthly payment.
- 5 ORG clients will consist of indigent and non-indigents. ORG will ask its indigent clients to help defray the costs of its counseling and budget plan costs through a payment of x - percent of their outstanding indebtedness. The payments from the clients will be strictly voluntary; no client will be denied services for failing to make a contribution; and ORG expects that x of its clients will make some contributions. ORG expects that x of its revenues will come from indigent clients. ORG anticipates that the average non-indigent budget plan client will pay \$x monthly, which is based on such clients having eight creditors and paying \$x per creditor.
- 6 ORG anticipates receiving x of its total revenues from religious organizations, civic groups, labor unions, businesses, and educational organizations who participate in ORG public information activities. ORG does not anticipate charging any fees for its public information or budgeting counseling services, but does plan to solicit a voluntary donation for the workshops and for the counseling, not to exceed \$x.

## **Operations and Activities:**

### Education and Counseling

NN hired NN August x, 200X, to head up their Education Program as its Director. The minutes of the Annual Meeting of the Board of Directors of ORG dated February x, 200X, discuss "operational imperatives for 200X including development of an educational and counseling component as originally envisioned by the Determination Letter." The Board of Directors minutes for October x, 200X confirms that the educational and counseling component operational imperatives had been successfully implemented by hiring NN as full time Educational Director.

NN stated there are no fees for the educational seminars. Most of these

seminars took place in the ST; however, they are expanding into ST . He is the only individual to provide financial seminars for ORG. There are no fees charged for educational seminars.

NN stated that the educational presentations are given to groups of people on subjects that include budgeting, saving, how to handle debt, etc. These seminars are generally referrals from companies that are "employee assistance providers". These companies contract with other companies to provide their employees with needed services or information, such as legal advice, help with financial concerns, etc. NN does some marketing of his seminars with colleges, high schools, etc.

A brochure (described in more detail later in this report) is handed out at seminars conducted by NN. It also includes a paper requesting feedback and rating on the seminar. This paper also includes a space for the attendee to put his/her name, phone numbers and e-mail address if they are interested in a debt consolidation quote. These questionnaires are then used for leads.

NN stated that he provides the education for ORG and the rest of the employees provide the services.

NN also provides one on one financial counseling in ST, where he meets with clients and reviews their financial needs—he does not set clients up on DMP's.

He provided the following breakout of his weekly activities and average time spent:

- |   |   |       |
|---|---|-------|
| 1 | One on One counseling, one per week               | x hrs |
| 2 | Group presentations                               | x hrs |
| 3 | Marketing   | x hrs |
| 4 | Rest of time spent on research, creating material | x hrs |

ORG had no documentation for education programs for 200X or 200X. NN was able to supply some documentation for 200X; however, he did not maintain documentation on all his seminars completed in 200X.

NN also stated that he has never met NN or any of ORG other board members. NN had previously indicated that NN responsibilities as board member was to coordinate educational activities with the Educational Director.

ORG generally carried a staff of approximately x individuals in 200X and 200X. NN was the only individual who provided education and counseling. He provided approximately x hours per week on his educational seminars (including travel and prep) and x hours on counseling (including travel and prep). The rest of his time was spent on marketing his seminars and miscellaneous duties. The other x personnel were involved with the sales of the Debt Management Program. Therefore, ORG staff time was spent as follows:

- Education
- Counseling
- DMP sales/support
- Miscellaneous

### Debt Management Program (also referred to as DMP)

The primary activity of ORG is their Debt Management Program (DMP), also referred to as a Debt Consolidation Program, which is offered to the general public who may be having difficulty paying their creditors timely. These individuals are generally paying high interest rates because they have been late with their payments. Also, they may have been assessed over limit or late fees by their creditors.

The DMP program is a debt consolidation program. ORG accepts one monthly payment from their clients, the debtor, which is then dispersed to the client's various creditors, and thus the client need only make one payment per month instead of several.

Many of the clients are paying high interest charges because their payment history is bad. Some creditors will lower their interest rates once the client is on the DMP. This also would generally result in a lower minimum monthly payment for the client.

If the client continues with the program timely, some creditors will remove late or over limit fees after 3 months of maintaining the DMP payments. Some creditors will bring the accounts "current" or in other words, show that they are not behind in payment.

### Area of Operation

ORG operates in every state except ST, per NN, Operations Manager.

Legislative law changes have been made recently by a number of states. Some states now require licenses, but on July x, 200X, NN, POA for ORG, stated that ORG does not have any licenses. They have made several applications, but there are several states that have bond restrictions and ORG has been unable to obtain the required bonds.

NN, Operations Manager, provided us with a listing of states and the various requirements for operation in those states. This list indicated that the following states require licenses:

ST

### Method of Operation

Their sales are conducted with their clients by phone, fax, and internet. Very few clients are walk-ins., maybe x or x a month that are from the local area. Even the local clients prefer to do this by phone. This information obtained from NN, Operations Manager for ORG.

The phone counselors are given lists of people's names, phone number, address etc. The counselor's supervisor, NN, stated that the phone counselors average x to x calls per hour when calling from the lists. If the individual is not home, they leave a message explaining who they are and asking for the individual to call them.



NN is a trainer and floor supervisor for the counselors. He keeps track of the counselors "phone times". The telephone calls are monitored thru a system and ORG management can ascertain each counselor's phone times. NN stated that counselors generally spend x to x hours of phone time on short days (Friday, x am to x pm) and x-x hours on longer days (x am to x pm), including leaving messages. Phone time does not include any time between phone calls.

NN went on to say that when the counselors reaches a client, they spend about x minutes on the initial call and from x minutes to 1 hour to complete the process (of explaining and setting up a client on a DMP) – depending on how well the client understands the way we calculate the new interest.

### Step 1

The client is called and asked if they wanted information regarding debt consolidation. The counselor identifies the ORG and the company and gives a brief explanation of the DMP. More details on this canned sales pitch is discussed below.

### Step 2

If interested the client is faxed several forms including the creditor information sheet and the client agreement.

**The Creditor Information Sheet is sent to the client to be completed with the information needed for each creditor to which they have.**

- 1 This first sheet of is a cover sheet, on ORG letter head, that contains the client's name, address, contact information, and first payment/initial contribution and recurring payment that are completed after the client provides information regarding creditors.
- 1 The second page contains the creditor's name, balance owed, interest rate, number of payments behind, monthly payment, address, telephone number, account number, cosigner, original creditor, original account number, primary account holder's name.
- 2 The third page contains the prospective client's monthly household expenses, utilities, insurance, revolving expenses, total assets, and income sources.

### **Client Agreement**

- 3 After the creditor information has been provided and the monthly payment amount established, the client is provided a "Client Agreement" and asked to sign, date, and return to ORG. They are told that this is not a contract.
- 4 The "Client agreement" The "Client agreement" states that the first DMP payment made is kept by ORG and that the second DMP payment made will be distributed to the client's creditors.

### **Step 3**

Once the Creditor Information Sheet is sent in, NN, the Credit Department and Operations Manager, calculates the client's DMP using the information specified by the various creditors. In this way he knows the minimum monthly payment the creditor will accept and the new lower interest rate (if any). He also determines their new weighted average interest rate (using all credit cards). The sheets which NN uses to determine the DMP are destroyed, so there were none from the years audited for review. Information on creditor requirements is explained later in this report.

### **Step 4**

The Counselor calls back the client and explains they have "great news". They provide them with the DMP payment amount and sometimes their weighted average interest rate (if it is favorable). They invite the customer to enter into the DMP. If the client agrees, the counselor gets the date the client wants to begin.

### **Step 5**

The client makes their first payment. The client is sent the "Welcome Letter" (described below). The client is then turned over to RR, a service provider, who then handles the client and their DMP as long as the client's DMP is completed or the client no longer makes their payments. The creditor information sheet is sent to RR which performs most of ORG administrative functions, such as verification of the accuracy of the information, completion of a proposal for each creditor listed and then send the proposals out. UU handles any communication needed for adjustments to the proposals. They also handle the processing of the monthly checks by the DMP client's and keeps statistics on their processes. They provide various reports to ORG, such as client deposits, Percentage of clients that remain on DMP by month.

### **Welcome Letter**

- 1 The first paragraph tells the client, we are pleased that you have chosen ORG, Inc. to assist you with your current financial situation.
- 2 The second paragraph tells the client, "it is important that you make timely payments to your program in order to secure the benefits offered by your creditors".
- 3 The third paragraph informs the client of, "our UU form which allows for funds to be automatically debited from either your checking or savings account".
- 4 The fourth paragraph advises the client, "that we do not accept personal checks. If you opt not to utilize the UU method, you must make all payments in the form of a Bank Check, Money Order or Western Union "Quick Collect" transfer".
- 5 The Welcome Letter then outlines what the client can expect during the next three months:
  1. First Two Weeks of Month One: The client is informed that, "your enrollment begins when we receive your first program payment. We then send proposal letters to each of the creditors you place on the program

within four business days after your funds clear the bank".

2. Second Two Weeks of Month One: The client is informed that, "the credit counseling department of each individual creditor receives your proposals but do not receive any payment at this time due to the initial payment contributions to EDMS".
3. Month Two: The client is informed that, "the second program payment is received and disbursed to the creditors. During this period your proposals will either be accepted or declined and the creditors will adjust the late and over-the-limit fees accordingly and bring past due accounts back to a current status".
4. Month Three: The client is informed, "If your statements have not been adjusted by this time, please call the customer service department with the names of those creditors so that we can contact them and determine the reason for the delay and address any other issues having to do with your account".

#### Client Fees

NN explained that when he started at ORG, the fee structure for clients consisted of \$x per creditor for the monthly processing fee (no maximum). The monthly processing fee is included in the DMP payment that the client is required to make. ORG company representatives have stated that this first payment is kept as a fee that covers the cost of customer set-up. It is not voluntary and is never waived. Then beginning the second month, the client's DMP payment is distributed to the client's creditors as agreed (less the monthly processing fee).

The client contract used in 200X contained the following statement:

"The credit-counseling department of each individual creditor receives your proposals.

They do not receive any payment at this time because of the first payment contribution to ORG. (Remember that you (sic) first payment is a tax deductible contribution that may be claimed on you (sic) income tax return)."

In February 200X, ORG changed their fee structure to a flat \$x monthly processing fee and began telling the clients that the first month DMP would be returned to the client's when they had completed their DMP. The sales pitch used when talking to the client actually states that this payment will be held in a trust account and will be dispersed to the creditors for the client's last DMP payment.

Currently, due to legislative change, the fee structure has changed. Mr. NN, ORG Operation's Manager, explained that except for ST., the monthly processing fee is now \$x. With management approval the counselor can set up a client with lower than normal monthly processing when that is what is needed to get the client on the DMP. There is some flexibility permitted, but the minimum accepted in 200X was \$x. Now, the

minimum accepted is \$x. ORG continues to keep the entire first month DMP for set up costs in all states except ST, ST and ST.

ST customers are handled by two of the counselors. The other counselors do not handle these customers.

ST – set up fee - \$x, this can be negotiable Monthly service fee: \$x or x% of creditor's portion of DMP up to \$x. If the client can't pay this or does not want to pay we go less. Standard is \$x - \$x. This is set by the credit manager.

ST – Set up fee is \$x; this can be negotiable. Monthly service fee is \$x flat. Cannot go less than \$x.

ST – Set up fee is \$x. Monthly service fee: Can charge \$x per creditor with a max of \$x, minimum \$x.

#### **Leads – Customer Lists**

The president, NN stated that ORG purchases x leads per month, from which individuals are contacted by telephone. ORG purchases these leads for \$x to \$x each. Only about x to x0 clients sign up each month – so only about x% to x% enter into the DMP program. For the periods ending December x, 200X, 200X, and 200X the organization claimed a deduction for "lead expense" in the amount of \$x,, \$x, and \$x respectively. After a review of disbursement journal and cancelled checks, and inquiry was made to the president regarding payees it was determined that "leads" or consumer lists were purchased from the following companies during 200X and 200X.

- a) UU
- b) UU
- c) UU
- d) UU
- e) UU
- f) UU

#### **Advertising – Internet**

ORG has a web-site which can be viewed by going to www.ORG.com. Research into the way their web page was structured in 200X revealed the following.

Their "Home Page" included these statements:

— We can help you:

- 1 Reduce your monthly payments as much as x%
- 2 Eliminate, or reduce interest rates
- 3 Eliminate late charges and over-the-limit fees
- 4 Consolidate your bills into one low monthly payment
- 5 Re-age past due accounts to improve credit rating

It provided links to several other pages, including:

Our Services  
Who We are  
Apply on Line  
Credit Report  
Contact Us

There was no educational information provided at their Web site thru November 200X.

Currently, these web pages include the following information:

The "Our Services" page describes four program steps. Step 1 provides that a specialized counselor will review your budget information and suggest one of ORG debt management programs. Step 2 provides that after deciding which program will be the most beneficial, the individual will make their first payment to ORG and will have one date to make a payment every month. Step 3 provides that ORG will contact creditors and negotiate a monthly payment with them if the prospective client decides to enroll in a debt management program after discussing their financial situation with a counselor. Step 4 provides that the client should keep making monthly payments on time and they will be on the road to a good credit rating, stable finances, and eliminating their debt.

The "Contact Us – Customer Service" page contains a list of reasons why creditors may be calling and how the client can assist in stopping the calls. The customer service page also provides the payment address and where subsequent payments should be made after making the first payment. This page also informs clients that: (1) all payments must be made payable to ORG; (2) ORG will not accept cash or personal checks as payment; (3) ORG gladly accepts certified checks, money orders, bank checks, Western Union Quick Collect; and (4) include name and social security number on all payments. More detailed information is provided on Western Union and Electronic Funds Transfer.

The "Apply Online" page allows a person to provide information in order to be contacted by an ORG counselor who will provide a free evaluation within 15 minutes.

The "Credit Report" is a link to UU. This site allows a person to get a free credit report and score online when the person tries credit monitoring free for x days. A person can also view their merged credit report which includes information provided by Equifax, Experian and Trans Union; their rights under the Fair Credit Reporting Act; and free help understanding, reading and disputing a credit report.

The "Debt Facts" page contains information on (1) pre-approved credit card offers, (2) average family credit card debt, (3) personal bankruptcy, and (4) national consumer debt.

The "Frequently Asked Questions" page provides an answer to the following eight questions: (1) just  
(2)  
(3)  
(4)  
(5)



The "Contact Us" page contains two different email, toll free phone number, fax number, and mailing address for potential clients and existing clients. Individuals are also informed they may contact a customer service representative at x. **Telephone Communication (ORG refers to it as "the Pitch")**

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